IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

CRP.No. 277 of 2004()

AGAINST THE ORDER DATED 10/02/2004 IN E.P.NO.32/2003 IN AP. 357/2000 of DISTRICT COURT, KASARAGOD

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REVN. PETITIONER/RESPONDENTS/DEFENDANTS:

1. T.J.ABRAHAM, AGED 43 YEARS, S/O. JOSEPH, THEEMBALANGAD, VIA. CHERUPUZHA, KADUMENI, KASARAGOD.

2. K.A.AUGUSTINE, AGED 43 YEARS, S/O. AUGUSTHY, KOLLAPILLIYIL HOUSE, NEAR ST.THOMAS CHURCH, NEELESHWARAM, CHITARICKAL

3. T.T.JOSEPH, AGED 43 YEARS, S/O. THOMAS, THONAKKARA HOUSE, VIA NEELESHWARAM, CHITIRIKKAL, KASARAGOD

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT/PETITIONER/PLAINTIFF:

MAHARASHTRA APEX CORPORATION LTD., KASARAGOD BRANCH, P.O.KASARAGOD, REPRESENTED BY ITS GENERAL POWER OF ATTORNEY HOLDER

BY ADV. SRI.S.R.DAYANANDA PRABHU
SRI.K.S.RAJESH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO.277/04

ORDER ON I.A.NO.783/2004 IN CRP.NO.277/2004

DISMISSED

16/7/2007 Sd/- P.R.RAMAN, JUDGE

TRUE COPY

P.S. TO JUDGE

P.R. RAMAN, J.

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C.R.P. NO. 277 OF 2004

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DATED THIS, THE 16TH DAY OF JULY, 2007.

O R D E R

Petitioners are judgment debtors in E.P. 32/2003 in AP 357/2000 on the file of the District Court, Kasaragod. The decree holder sought to execute the decree in Arbitration Award. Petitioners herein filed objection to the Execution Petition raising a plea of no means. The matter was posted to 10.2.2003 on which day there was no appearance and the court issued arrest warrant against the revision petitioners. Though a petition to recall the arrest warrant was filed, the same was dismissed stating that it is only an attempt to drag on the proceedings.

2. Learned counsel submits that in a case where there is a plea of no means, sufficient opportunity ought to have been given. Further, there is a mistake on the part of the counsel in taking note of the date as 10.3.2004 instead of 10.2.2003 and there is no willful negligence or deliberate action on the part of the petitioners in not appearing before the court on the date fixed.

3. Heard both sides. In the facts and circumstances, there will be a direction that in case petitioners appear before the court below and adduce

evidence in support of the plea of no means, after giving an opportunity to the decree holder, the court below shall consider such objections and pass appropriate orders in accordance with law. So as to enable such an opportunity to the petitioners, the arrest warrants issued by the court below are recalled. Any amount deposited before the court below pursuant to the interim order is allowed to be withdrawn by the decree holder.

P.R. RAMAN,
(JUDGE)

knc/-